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*Attorney for Petitioners*

Norton, Lynn G.

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DAVID McKINNEY, an individual; SALLY  
REYNOLDS, an individual; DAVID  
EASTMAN, an individual; and TONY  
BROWNLEE, an individual,

Petitioners,

v.

CITY OF MERIDIAN, an Idaho  
municipal corporation,

Respondent,

**PETITION FOR JUDICIAL REVIEW**

COMES NOW, the above-entitled Petitioners, by and through their attorney of record,  
Andrea D. Carroll, and petition this Court for judicial review as follows:

1. The entity for which judicial review is sought is the City of Meridian (the “City”).
2. This court has jurisdiction over this matter pursuant to Idaho Code § 67-6521 as  
Petitioners are persons affected by a final agency action and allege substantial harm to  
their real property interests.

3. Petitioner David (“Dave”) McKinney resides and owns property at 1225 W. Bacall St., in Meridian, Ada County, Idaho.
4. Petitioner Sally Reynolds resides and owns property at 1166 W. Bacall St., in Meridian, Ada County, Idaho.
5. Petitioner David Eastman resides and owns property at 1192 W Bacall St., in Meridian, Ada County, Idaho.
6. Petitioner Tony Brownlee resides and owns property at 797 W Barrymore Dr., in Meridian, Ada County, Idaho.
7. Petitioners McKinney, Reynolds, Eastman and Brownlee allege that their individual interests in real property will be adversely affected or harmed by the City’s action. The Petitioners also assert that they have exhausted their administrative remedies.
8. Venue is proper in this court pursuant to Idaho Code § 67-5272 because (a) the hearings at issue were held in the City which is located in Ada County, Idaho; (b) the final action was taken in Ada County, Idaho; (c) the Petitioners are affected and aggrieved parties owning real property in the City; and (d) the parcels of real property for which permits were sought by Lynx and DMB Real Estate Partners, LLC (collectively referred to as, the “Applicant”), are located in the City.<sup>1</sup>
9. The subject of this judicial review is the City’s approval of permit applications for Annexation and Zoning (“AZ”), the approval of a Preliminary Plat (“PP”), and a Variance (“VAR”) (collectively, the “Permits” or “H-2017-0088”).
10. The City’s consideration of the Applicant’s Permits are summarized as follows:

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<sup>1</sup> The proposed development site is located at the southeast corner of North Linder Road and West Chinden Boulevard (also referred to in the administrative proceedings as “State Highway 20/26”). The parcels are identified by Ada County as S0425223011, S0425212480, and S0425212420. The Parcels are owned by Lynx Investments, LP, a Boise limited partnership, and CCPD, Inc., an Oregon corporation.

- a. The Meridian Planning and Zoning Commission (the “Commission”) considered the Permits first on September 7, 2017. Following that hearing, the Applicant requested a continuance. The Permits were again considered on October 12, 2017. The Commission unanimously recommended denial of the applications. The City Council thereafter considered the applications on January 16, 2018 and remanded the matter back to the Commission.
- b. The Commission considered revised plans for the permits again on November 15, 2018, and voted to recommend approval of the Annexation and Zoning, and approval of the Preliminary Plat.
- c. On January 15, 2019, the Permits were again considered by the City Council. At the conclusion of this hearing, the City Council voted to approve the Permits.
- d. On February 5, 2019, the City Council approved written findings in support of the City’s decision to approve the Permits.
- e. On February 19, 2019, the Petitioners submitted written requests for reconsideration.
- f. On March 19, 2019, the City Council considered the Petitioners’ requests for reconsideration and they were denied. The written decisions on the denied requests for reconsideration were provided to the Petitioners and other related parties on March 28, 2019.

11. Transcripts are requested for the portions of the Commission and City Council meetings related to the Permits beginning September 7, 2017 through March 19, 2019. During this period of time, hearings and/or deliberations on this matter were conducted by the City at which time oral and written presentations were submitted. In addition,

minutes of all such meetings were compiled and are also requested to be included in the record.

12. The Petitioners request that the City file, within forty-two (42) days of service of this Petition, a certified copy of the entire record of these proceedings as required by law, including, but not limited to:

- a. All exhibits, all letters, all exhibits attached to letters, a digital copy of all audio, video, and visual presentations submitted to the City, and all evidence or other information received or considered as part of the City's review of the Permits;
- b. Any written or emailed statements regarding these permits provided to the City Clerk, City Planning Department, the Mayor or City Council, that was submitted by any of the named Petitioners prior to the date of this filing.
- c. All reports, petitions, memoranda, staff reports and other documents;
- d. The dates, times and summary of any known communication between the Mayor or Councilmembers and any representative of the Applicant outside the City Council meetings;
- e. A copy of any written correspondence or records of correspondence between the Mayor or Councilmembers and any representative of the Applicant;
- f. A copy of the City's zoning ordinance and comprehensive plan that was valid on January 15, 2019;
- g. The minutes and transcripts of all the City's meetings with regard to the consideration of the Applicant's Permits;
- h. The minutes and transcript of the City Council's consideration of any Request for Reconsideration of this application on March 19, 2019;

- i. Any additional documents relating to the approval of the Permits that were generated and/or finalized after the decision, including, but not limited to, the final Development Agreement;
  - j. A copy of any text messages that were made or received by the Mayor or any member of the City Council during the hearing that occurred on January 15, 2019; and
  - k. A copy of the internet browsing history for the Mayor or any member of the City Council on any personal or city-owned laptop or other device capable of internet access during the hearing that occurred on January 15, 2019.
13. The Petitioners reserve the right to object to the transcripts and record on the basis of inaccuracy or incompleteness. Further, the Petitioners reserve the right to submit evidence of violation of law or irregularities affecting the procedures of the hearings not shown in the record transmitted to the Court.
14. A preliminary statement of the issues for judicial review that the Petitioners intend to assert include the following:
- a. Were the City's actions in violation of constitutional or statutory provisions?
  - b. Were the City's actions in excess of its statutory authority?
  - c. Were the City's actions taken upon unlawful procedure?
  - d. Were the City's actions unsupported by substantial evidence on the record as a whole?
  - e. Were the City's actions arbitrary, capricious, or constituting an abuse of discretion?

- f. Were the City's actions unlawfully based, in whole or in part, on *ex parte* communication or fact-finding?
  - g. Was the City's written decision in compliance with Idaho and federal law?
  - h. Did the City's actions violate the Petitioners' substantive or procedural due process rights?
15. Petitioners reserve the right to augment and supplement the foregoing issues pursuant to Rule 84(c)(5) of the Idaho Rules of Civil Procedure.
16. The undersigned certifies that a copy of this Petition for Judicial Review has been or will be served on the same date as it is filed with the district court.
17. Pursuant to Rule 84(f) and (g), Petitioners are required to pay the City an estimated fee for preparation of the administrative record, and the transcript of the City Council hearings. The undersigned certifies that the estimated payment for such record will be paid on the date of this filing and that the Petitioners will pay the balance after the record is completed.
18. Electronic notification has been contemporaneously provided to Brian Ballard, who acted as legal representative for the applicant team during the administrative proceedings.

DATED this 16th day of April, 2019.

CARROLL LAW, PLLC



By: \_\_\_\_\_  
ANDREA D. CARROLL

## CERTIFICATE OF SERVICE

I hereby certify that I have on this 16th day of April, 2019, served the foregoing document as follows:

### City of Meridian:

Chris Johnson  
Meridian City Clerk's Office  
33 E. Broadway Ave  
Meridian, Idaho 83642

- ☐ U.S. Mail
- ☒ Personal Delivery
- ☐ E-file
- ☒ Email: cjohnson@meridiancity.org

Bill Nary  
Meridian City Attorney  
33 E. Broadway Ave  
Meridian, Idaho 83642

- ☐ U.S. Mail
- ☐ Personal Delivery
- ☐ E-file
- ☒ Email: bnary@meridiancity.org

### Representative of Applicant Lynx / DMG Real Estate Partners, LLC:

Brian Ballard  
Hawley Troxell  
877 W. Main St.  
Boise, Idaho 83702

- ☐ U.S. Mail
- ☐ Personal Delivery
- ☐ E-file
- ☒ Email: bballard@hawleytroxell.com

By:   
ANDREA D. CARROLL